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C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 004321

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DEPT FOR AF/E, AF/EPS, EB/IFD/OMA  
USAID FOR AFR/DP WADE WARREN, AFR/EA JEFF BORNES AND  
JULIA ESCALONA  
MCC FOR MALIK CHAKA  
TREASURY FOR OREN WHYCHE-SHAW  
LONDON AND PARIS FOR AFRICA WATCHERS

E.O. 12958: N/A

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SUBJECT: AMBASSADOR MEETS KENYA'S BESIEGED ANTI-CORRUPTION DIRECTOR

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Classified by Ambassdor Michael E. Ranneberger for reasons 1.4 (B) and (D).

11. (C) Summary: In a courtesy call by the Ambassador on October 2, Kenyan Anti-Corruption Commission (KACC) Director Aaron Ringera vigorously defended the performance of the KACC while also candidly analyzing the structural challenges that make prosecution of grand-scale corruption cases virtually impossible in Kenya. Ringera also revealed that on that very day, he was sending several case files to the Attorney General for prosecution, including those of five former ministers, two of whom likely come from the Kibaki Administration. This revelation comes at a moment when Ringera has lost a great deal of credibility for his handling of the Anglo-Leasing set of scandals. It may thus reflect little more than a political move on his part to shift public pressure away from the KACC and onto the Attorney General's Office. End summary.

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Context: Ringera Under Siege  
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12. (SBU) The October 3 courtesy call by the Ambassador on Kenya Anti-Corruption Commissioner (KACC) Director Justice Aaron Ringera came in the context of strong public criticism of the well-endowed KACC, and of the well-paid Ringera personally, for failing to make significant progress investigating the Anglo-Leasing series of procurement scams. Privately, as well, many donors have long suspected Ringera of at best pursuing a passive strategy in the Anglo-Leasing investigations out of loyalty and deference to President Kibaki -- and by extension to the close-knit group of advisors in Cabinet or in the Office of the President who have been implicated in the scandals.

13. (SBU) Things got worse for Ringera in mid-September, after Justice Minister Martha Karua stated publicly that whistleblower and former Permanent Secretary of Governance and Ethics John Githongo had refused to cooperate with KACC in the Anglo-Leasing investigations. Githongo on September 19 launched a public broadside which made front page news in Kenya. In his public statement, Githongo called Karua "flatly wrong" in her statement, and then detailed the lengths to which he had cooperated fully with Ringera and the KACC. He then quoted and paraphrased from a conversation he had with Ringera in London in early 2006 in which the latter said Githongo should drop his pursuit of the Anglo-Leasing culprits because they had already "suffered enough." Githongo further stated that Ringera told him quietly that there would be no Anglo-Leasing prosecutions until after

the elections in 2007.

¶4. (SBU) Ringera struck back the following day with his own statement which attempted to call Githongo's credibility into question. But when others who had been present at the London interviews backed Githongo's account and detailed Ringera's apparent nonchalance and disinterest during the meetings, the damage was done. The upshot for now is that the credibility and independence of Kenya's most important institution for preventing and investigating corruption are seriously in question just as political polemics and fund raising pressures are heating up ahead of the 2007 election.

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The Good News, According to Ringera  
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¶5. (C) In the October 2 meeting with Ringera, the Ambassador reiterated serious U.S. concerns about corruption in Kenya, but noted that overall, there is a good deal of forward movement in the country, both politically and economically. This progress, however, is obscured by the perception of persistent inaction on the part of the authorities against recent cases of grand-scale corruption. He underlined the need for the Government of Kenya (GOK) to secure prosecutions against senior-level officials accused of graft, and offered continued USG assistance to Kenya in the war on corruption.

¶6. (C) In response, a relaxed Ringera, joined by two of his three Deputy Directors, reviewed the history of the Anglo-Leasing scandals beginning with their public exposure in mid-2004. In so doing, he staunchly defended the performance of the KACC. Court cases launched in early 2005 against five GOK officials involved in Anglo-Leasing "have gone nowhere," acknowledged Ringera. But the KACC has been investigating 16 of the 18 Anglo-Leasing-style scams "non-stop" since then and has interviewed 270 people.

¶7. (C) Revealing breaking news, Ringera said investigations into five of the 18 have been completed, and that very day, the case files were being sent to the Attorney General's Office (AG) with

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recommendations to prosecute two former Finance Ministers, one former National Security Minister, one former Transport Minister, three principle secretaries, two other former high-level GOK officials, and the current head of the Meteorological Department. Ringera handed the Ambassador a freshly minted copy of the press statement released later that day and which made front page headlines October 3. (Note: Ringera's statement did not name names, but it is likely that at least two of the five ministers recommended for prosecution are former Finance Minister David Mwiraria and former Security Minister Chris Murungaru, both of whom would be considered "big fish" from the Kibaki era. End note).

¶8. (C) Investigations into 11 more corrupt Anglo-Leasing-style contracts are at an "advanced stage," said Ringera, and these might be completed by the end of October. A sitting minister will also likely be recommended for prosecution shortly for having falsified mileage claims. Lastly in terms of the good news, Ringera claimed KACC has been very successful in recovering ill-gotten gains. Without mentioning sums, he said the forthcoming KACC annual report will show significant success in asset recovery.

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The Bad News: Don't Expect Any Prosecutions  
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¶9. (C) Tempering expectations, Ringera noted that cases of the Anglo-Leasing variety are complex and difficult, sometimes requiring up to seven years to fully investigate based on international experience. Locally, evidence is hard to gather from reticent witnesses, and internationally, some countries aren't cooperating in providing needed information.

¶10. (C) Turning to prosecutions, Ringera candidly told the Ambassador not to expect any major successes during the latter's three-year tenure in Kenya. First, he explained, Kenyan prosecutors are far too few in number, inadequately trained -- especially for

complex corruption cases -- and underpaid. When they do show promise, they are snatched up by private law firms which pay far better. Further up the justice chain, Kenya also lacks a sufficient number of judges and magistrates. Even if the GOK could hire more, there would be insufficient space in the country's courthouses to accommodate them. Finally, Ringera acknowledged that the rules and loopholes in Kenya's judicial system disproportionately favor the accused, especially in high-profile corruption cases in which corrupt officials stay one step ahead of prosecution with the help of well-paid defense counsel.

¶11. (C) Asked about possible solutions to these issues, Ringera said amnesty deals were a "very good idea," despite popular distaste for the concept. Amnesty arrangements are a pragmatic, practical way to resolve longstanding historical cases in which evidence is hard to compile and in which witnesses fade from the scene. He also agreed with the Ambassador when he said Kenya needs anti-money laundering legislation "yesterday." He appealed to the Ambassador to press the executive of the GOK for passage of the draft law.

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Comment  
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¶12. (C) Ringera, despite the public battering to his reputation in recent weeks, was in fine form, combining a vigorous defense of the KACC with a candid, somewhat downbeat analysis of the structural inability of the Kenyan legal system to bring major corruption figures to justice. His public announcement that several big fish have been investigated and recommended for prosecution shows that Ringera is feeling the pressure to show results. But one wonders if the cases are strong enough to justify prosecution. If not, Ringera may be merely passing the hot potato to Attorney General Amos Wako, setting up the latter for failure. But Wako we know is equally adept at defending himself and shifting the blame and responsibility to someone else when it comes time to fish or cut bait in prosecuting powerful Kenyans. One is left with the impression of an elaborate shell game in which case files are moved from one institution to another, shifted back and forth so that no one is ever really held accountable for results - and no one ever gets prosecuted. Probably only President Kibaki has the power to end the shell game, but there is no sign he's willing or able to do so.  
Ranneberger